No. 18

In the Supreme Court of the United States

OCTOBER TERM, 1960

UNITED STATES OF AMERICA, APPELLANT

v.

JOHN HANCOCK MUTUAL LIFE INSURANCE CO., GEORGE HETZEL AND GRACE MARIE HETZEL

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF KANSAS

REPLY BRIEF FOR THE UNITED STATES

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INDEX

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In their brief, appellees present four reasons for this Court to affirm the judgment of the court below: (1) when the United States "sought * * * judgments",[1] upon its three unsecured promissory notes,

[1] Appellees' description of the United States as "seeking" judgment on the unsecured note is somewhat imprecise. In its cross-petition, the United States did not specifically pray for judgment upon either the unsecured notes or the secured, but asked that the amounts due on all four notes be determined to be a lien inferior only to that of the Insurance Company, that the proceeds of the sale be applied to the Government's lien after the senior lien had been satisfied, and that the court grant "all other relief in the premises" (R. 13). The trial court, following Kansas law, Kan. Gen. Stat., 1949, 60-3107, granted the United States judgment upon all four notes.

it "was seeking affirmative relief and it thereby subjected itself to the rules and procedures imposed by the statutes and the courts of the State of Kansas" (Brief, pp. 6–7) and thus waived its sovereign immunity; therefore it was unnecessary to look to 28 U.S.C. 2410(a) and its attendant conditions;

(2) the redemption provision of Section 2410(c) was meant to apply to situations in which a foreclosure sale is held "only" (Brief, p. 10) to satisfy a lien prior to that of the United States and not to a situation where the proceeds of the sale, if in excess of the claims of the senior lienor, would be applied under Kansas law to the junior lien claim of the United States;

(3) Congress intended that, when the redemption provisions of state law conflict with the right of redemption accorded the United States in Section 2410(c), the state law shall control; and

(4) if the redemption provision of Section 2410(c) was meant to control, although in conflict with state law, Section 2410(c) would be invalid, for such provision is "beyond the bounds of Congressional authority" (Brief, p. 19).

These arguments are without merit. As three of these four contentions of appellees were not raised by them in the court below (the third argument dealing with congressional intent is the sole exception), a reply is necessary.

At the outset it should be noted that appellees concede that under Kansas law the United States as the holder of a junior lien was an essential party to the

suit of the appellee Insurance Company to foreclose its senior lien if the Government's junior lien was to be extinguished. It is also conceded that, in the foreclosure proceeding instituted by appellee as the holder of the first mortgage, service of process was made upon the United States in accordance with the procedure provided in 28 U.S.C 2410(c) (Appellees' brief, p. 5). It is our position that, since the plaintiff utilized Section 2410 to subject the United States to process and this was the only method by which such process could be accomplished, the Government was guaranteed a one-year right to redeem. As this Court said in *United States* v. *Brosnan*, 363 U.S. 237, 246, "the Government is guaranteed a one-year right to redeem if the plaintiff proceeds under Section 2410 * * *."

1. The first and second arguments advanced by appellees may be considered together. They ignore the explicit provision of Section 2410(c) that, "[i]n any case where the debt owing the United States is due, the United States may ask, by way of affirmative relief, for the foreclosure of its own lien * * *." This provision leaves no doubt that Congress contemplated that the United States could seek the application of funds derived from a foreclosure sale to its own junior lien after the satisfaction of all senior liens. Thus the fact that the United States obtained judgment upon its three unsecured notes[2] or that Kansas law provides that the excess proceeds derived from a foreclosure sale might benefit a junior lienor—in this case

[2] See note 1, p. 1, *supra*.

the United States—is immaterial. Although the United States might subject itself to Kansas law by seeking a state remedy with respect to its unpaid notes, the Government's right of redemption in this case derives from the fact that appellee Insurance Company had invoked Section 2410 in order to wipe out the Government's lien.

The efforts of the United States in the foreclosure proceeding, initiated by appellee Insurance Company, to seek a determination by the court of the validity of its junior lien, the amount of the indebtedness due, and an order providing that, after the payment of costs and expenses on the Insurance Company's lien, the proceeds of the sale be next applied to the lien of the United States (R. 13), were all defensive measures occasioned by the fact that the United States had been subjected to the jurisdiction of the court under Section 2410. This was not a case where the United States had voluntarily sought the aid of the Kansas court, thereby waiving its sovereign immunity from suit, and thereafter the Insurance Company had attempted to enforce the lien of its first mortgage. In that hypothetical situation there would have been no need for the Insurance Company to have utilized Section 2410 in order to subject the United States to process.

Here, the appellee Insurance Company explicitly invoked Section 2410 in order to subject the United States to process and to extinguish the junior lien of the United States; the later efforts of the Government to protect its property interest in accordance with

Kansas law were compelled by the exigencies of its subordinated position. If the initial contentions of the appellees were accepted, it would require this Court, in effect, to write into the unqualified redemption right provided in Section 2410 a qualification that the United States may not seek any affirmative relief. Neither the legislative history nor the plain statutory language shows that such a limitation on the Government's redemption right was intended by Congress.

2. As to the third contention of appellees, we pointed out in our main brief (pp. 22–23) that Section 2410(c) as originally enacted in 1931 (46 Stat. 1528) provided that state law should govern with respect to the discharge of government liens "[e]xcept as herein otherwise provided" and the redemption right was one of the conditions otherwise provided. Unless one is to ignore the expressed intent of Congress to make no change in substance when it deleted the "exception" clause in the 1948 revision of the Judicial Code (see our main brief, pp. 23–24), appellees may not successfully contend that Congress meant by the first sentence of Section 2410(c)[3] that state law may be used to defeat the Government's right of redemption.

"We have often held that where essential interests of the Federal Government are concerned, federal law

[3] The first sentence of 28 U.S.C. 2410(c) provides that:

> A judicial sale in such action or suit shall have the same effect respecting the discharge of the property from liens and encumbrances held by the United States as may be provided with respect to such matters by the local law of the place where the property is situated. * * *

rules unless Congress chooses to make state laws applicable." *United States* v. *93.970 Acres,* 360 U.S. 328, 332–333. In *Brosnan, supra,* the Court said "the basic question is * * * whether Congress intended to exclude the application of all state procedures, whatever their existence or effectiveness might be." 363 U.S. at 250. In enacting Section 2410, Congress did not choose to subject the redemption rights of the United States to state law. By providing for an unqualified, unconditional right of redemption, Congress made it clear that it did not intend the federal right to be dependent upon the refinements of state law, as suggested by appellees.

When Congress intended that the Government should not have the right of redemption conferred by Section 2410(c), it made that intention clear. Section 505 of the Act of April 20, 1950, 64 Stat. 81, as amended, 12 U.S.C. 1701k (pertaining to the National Housing Program), and Section 6, Act of August 19, 1937, 50 Stat. 706, as amended, 12 U.S.C., Supp. I, 640*l*(a)(2) (pertaining to the federal land bank and related agencies), contain unambiguous language that the right of redemption provided in Section 2410(c) shall not apply to the situations described.[4]

[4] Appellees develop at length (Brief, pp. 21–22) an alleged conflict between the Government's position in certain land bank cases and its position here as to the applicability of the Kansas redemption statute. This "conflict" does not exist because the federal land banks are, *by statute,* not entitled to claim the benefits of Section 2410(c). See 12 U.S.C. 640*l*, cited in the text.

Appellees also suggest that the failure of the Government to assert an exclusive right to redemption during the first year after a foreclosure sale (in contra-distinction to a right co-

Appellees state (Brief, p. 16), however, that Section 2410(c) was intended to give the United States a right of redemption only in those states "where a redemption right did not otherwise exist." But there is nothing in either the legislative history or the broad language of the statute that justifies such a limitation. On the contrary, the Section states unqualifiedly that "[w]here a sale of real estate is made to satisfy a lien prior to that of the United States, the United States *shall* have one year * * * within which to redeem" (emphasis added). This right would be seriously curtailed if, in any case where state law provided a different redemption right for junior lienors, the right of the United States was to be measured by the state rather than by the federal standard. Indeed, although Kansas law permits a junior lienor to redeem only during the 13th through 15th months after sale—at a time when the one-year period provided by federal law has expired—the junior lienor does not even have this right when the mortgagor has redeemed during the first year, as in this case.

3. Appellees' remaining argument is that, if Congress intended the redemption provision of Section

existent with that of the mortgagor) would lead to the possibility of the mortgagor extinguishing the Government's right of redemption in Kansas by beating the Government to the courthouse door. We are not here faced with such a hypothetical situation, since in this case the Government did in fact attempt to redeem prior to the mortgagor's attempt. See our main brief, p. 5. We suggest that the answer in this hypothetical case would be for the Government to have the right to redeem from the mortgagor during the first year upon the payment of the amount specified in Kan. Gen. Stat., 1949, 60-3451. The mortgagor would then have the right to re-redeem from the Government.

2410(c) to control in conflicts with state law, it is an unconstitutional "interference by Congress in property relationships within a state" (Brief, p. 19). Appellees fail to consider, however, that what is involved here is not the law applicable to property relationships *per se* but the power of Congress to establish rules applicable to contracts entered into by the United States.

In this case, the property owners, the Hetzels, executed and delivered a first mortgage to the Insurance Company on May 29, 1951 (R. 19). More than two years later, on October 22, 1953, the Hetzels executed and delivered a second mortgage to the United States, as security for one of their notes (R. 22). Before the execution of the second mortgage, the Hetzels possessed (in addition to an equitable interest) an expectancy that, upon any foreclosure of the first mortgage, they would be able to exercise a Kansas statutory right of redemption, Kan. Gen. Stat. 1949, 60-3439, 60-3440. Not even the appellees suggest that this was a vested right that could not be denied by a change in Kansas law before foreclosure. However, Kansas law happens to provide that this expectancy may not be waived by the mortgagor, Kan. Gen. Stat., 1949, 60-3438, though it may be transferred or assigned, Kan. Gen. Stat., 1949, 60-3455.

As appellees suggest (Brief, p. 24), their constitutional argument is reduced to whether Kansas law, providing that the Hetzels have an *exclusive* right to redeem during the first year after a foreclosure sale, controls the contractual relations of the

United States when Congress has explicitly provided that the United States shall have a right to redeem during that year. They suggest that, if the Government's contract resulted in the Hetzels losing their exclusive right to redeem, there would be a denial of that alleged property right in violation of Kansas law.

The guidelines for the determination of this question have often been laid down by this Court. See, *e.g., United States* v. *Standard Oil Co.*, 332 U.S. 301; *United States* v. *County of Allegheny*, 322 U.S. 174; *Clearfield Trust Co.* v. *United States*, 318 U.S. 363, and, most recently, *United States* v. *Brosnan*, 363 U.S. 237. In *Brosnan*, it was contended—as appellees here contend (Brief, p. 19–23)—that under *United States* v. *Bess*, 357 U.S. 51, 55, state law must be looked to for determining the "property and rights to property" in the discharge of liens. This Court rejected that argument, holding upon the authority of *Clearfield Trust, supra,* that the divestiture of junior federal liens was to be determined by federal law, but that "except to the extent that Congress may have entered the field," it was desirable for federal law to follow state law.[5] 363 U.S. at 241. Finally, the Court repeated that "[t]his conclusion would not, of course, withstand a congressional direction to the contrary." 363 U.S. at 242.

In the instant case, we have such a clear direction of the Congress that state law in conflict must bow. For Congress has given the United States an absolute

[5] Although the Court in *Brosnan* dealt with federal tax liens, its reasoning is equally applicable to the liens here involved.

right to redeem within one year, and that federally-created right would be vitiated if it could be defeated by a contrary provision of state law. Appellees have not been able to cite any pertinent authority to the contrary and we know of none.

The cases relied on by appellees (Brief, pp. 19–22) are inapposite. *United States* v. *Fox*, 94 U.S. 315, upon which main reliance seems to be placed, concerned a devise made to the United States of real estate in New York. There was no conflict between state and federal law, but rather a holding that, as devises could not be made at common law and as this devise served no federal purpose as defined by Congress, the New York statute of wills would control. Appellees have omitted from their quotation from the Court's opinion in this case the following significant sentence: "The power of the State in this respect [*i.e.*, as concerns the disposition of immovable property] follows from her sovereignty within her limits, *as to all matters over which jurisdiction has not been expressly or by necessary implication transferred to the Federal government.*" 94 U.S. at 320. (Emphasis added.)[6]

United States v. *Bess*, 357 U.S. 51; *Central Surety & Ins. Corp.* v. *Martin Infante Co.*, 272 F. 2d 231 (C.A. 3); *Matter of City of New York*, 5 N.Y. 2d 300,

[6] *In re Karlinski's Estate*, 180 Misc. 44, 43 N.Y.S. 2d 40 (Surrogate's Court, Erie County), is to the same effect, holding that, while the Federal Government had no power *per se* to affect state laws of descent, it could enter this field in the exercise of its constitutional power to raise money for the support of military operations.

157 N.E. 2d 587; and *Aetna Cas. & Sur. Co.* v. *United States,* 4 N.Y. 2d 639, 152 N.E. 2d 225, held only that the existence and extent of a property right to which a federal lien might attach was to be determined by state law; once that determination is made, federal law controls as to whether a federal lien attaches to the property. In *Ginsberg* v. *Lindel,* 107 F. 2d 721, the Eighth Circuit, while deciding that a congressional statute was not intended to apply retrospectively to affect a property right already vested by state law, suggested that such retrospective application, if intended, would be unconstitutional under the Fifth Amendment. 107 F. 2d at 725–26.[1]

Finally, *Federal Land Bank* v. *Shoemaker,* 155 Kan. 501, 126 P. 2d 205, and *Federal Land Bank* v. *Ludwig,* 157 Kan. 657, 143 P. 2d 784, have no pertinence, since they involved no conflict between federal and state law. See n. 4, p. 6, *supra.*

CONCLUSION

For the reasons stated in the Government's main brief and for the further reasons stated herein, the judgment of the Supreme Court of Kansas affirming the trial court's denial of the Government's motion for an order directing the clerk to issue to it a certificate of redemption, should be reversed and the cause re-

[1] In the instant case, the Hetzels' contract was entered into *after* the enactment of 28 U.S.C. 2410. See *supra,* pp. 5, 8.

manded with instructions to permit the United States to redeem the property.

Respectfully submitted.

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OCTOBER 1960.

U. S. GOVERNMENT PRINTING OFFICE: 1960

SUPREME COURT OF THE UNITED STATES

No. 18.—October Term, 1960.

United States, Appellant, v. John Hancock Mutual Life Insurance Co., George Hetzel and Grace Marie Hetzel.	On Appeal From the Supreme Court of Kansas.

[November 7, 1960.]

Mr. Chief Justice Warren delivered the opinion of the Court.

The issue in this case is whether the United States, as the second mortgagee of real estate judicially foreclosed in a proceeding to which the United States was made a party under 28 U. S. C. § 2410[1] can redeem within one year from the date of sale pursuant to 28 U. S. C. § 2410 (c), despite a conflicting state statute giving the mortgagor the exclusive right to redeem within that period.

[1] "Actions affecting property on which United States has lien

"(a) Under the conditions prescribed in this section and section 1444 of this title for the protection of the United States, the United States may be named a party in any civil action or suit in any district court, or in any State court having jurisdiction of the subject matter, to quiet title to or for the foreclosure of a mortgage or other lien upon real or personal property on which the United States has or claims a mortgage or other lien.

"(b) The complaint shall set forth with particularity the nature of the interest or lien of the United States. In actions in the State courts service upon the United States shall be made by serving the process of the court with a copy of the complaint upon the United States attorney for the district in which the action is brought or upon an assistant United States attorney or clerical employee designated by the United States attorney in writing filed with the clerk of the court in which the action is brought and by sending copies of the process and complaint, by registered mail, to the Attorney General of the United States at Washington, District of Columbia. In such actions the United States may appear and answer,

The facts are not in dispute and, insofar as here pertinent, may be summarized as follows. Appellee John Hancock Mutual Life Insurance Co. held a note for $25,000, secured by a mortgage on certain Kansas real estate. The note was in default and the insurance company instituted proceedings in the District Court of Edwards County, Kansas, seeking a declaration that its mortgage constituted a first lien on the property and asking foreclosure to satisfy this lien. An agency of the United States, the Farmers' Home Administration, held four notes executed by the mortgagors against whom the insurance company was proceeding and one of these notes, in the face amount of $10,565, was secured by a mortgage on the property securing appellee's note. It is undisputed that the United States' secured note was junior in priority to that held by appellee. However, under Kansas law, a senior lienor must join junior lienors in the fore-

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plead or demur within sixty days after such service or such further time as the court may allow.

"(c) A judicial sale in such action or suit shall have the same effect respecting the discharge of the property from liens and encumbrances held by the United States as may be provided with respect to such matters by the local law of the place where the property is situated. A sale to satisfy a lien inferior to one of the United States, shall be made subject to and without disturbing the lien of the United States, unless the United States consents that the property may be sold free of its lien and the proceeds divided as the parties may be entitled. Where a sale of real estate is made to satisfy a lien prior to that of the United States, the United States shall have one year from the date of sale within which to redeem. In any case where the debt owing the United States is due, the United States may ask, by way of affirmative relief, for the foreclosure of its own lien and where property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of its claim with expenses of sale, as may be directed by the head of the department or agency of the United States which has charge of the administration of the laws in respect of which the claim of the United States arises."

closure proceeding in order to cut off the junior liens. *Motor Equipment Co.* v. *Winters*, 146 Kan. 127, 69 P. 2d 23. And the only way in which the United States can be joined in its capacity as junior lienor is pursuant to the terms of 28 U. S. C. § 2410, since the United States has not otherwise waived sovereign immunity in this type of situation. Consequently, appellee insurance company joined the United States and the United States cross petitioned for an adjudication that it held a second lien on the property, inferior only to appellee's lien, in the amount owed on all four notes. The Kansas District Court held that appellee enjoyed a first lien entitling it to a judgment of $26,944.78 and that the United States held a second lien by virtue of its secured note, entitling it to $10,402.61.[2] The court ordered both liens foreclosed. At the foreclosure sale, the insurance company bought in the property in the amount of its own judgment. The United States did not bid and the sale was confirmed by the District Court on February 5, 1958. Four months later—on June 5, 1958—the United States instituted proceedings to redeem the property pursuant to the terms of 28 U. S. C. § 2410 (c). This section specifies that, when the United States is joined in a foreclosure proceeding under § 2410—in particular § 2410 (a)—and a sale is held to satisfy a lien prior to that of the United States, "the United States shall have one year from the date of sale within which to redeem." Although the United States satisfied the procedural requirements of Kansas law, Kan. Gen. Stat., 1949, § 60–3451, its tender was refused and, consequently, it moved the court to compel the clerk to issue it a redemption certificate. The District Court denied relief and the

[2] Judgment for $2,642.30 was entered in favor of the United States on the three unsecured notes. While the United States sought to include these notes in its second lien on the property, the court decreed that this lien extended only to the amount of the secured note.

Kansas Supreme Court affirmed,[3] holding that the United States' action was barred by the provisions of state law granting the mortgagor the exclusive right to redeem his property during a period of twelve months following the date of a foreclosure sale.

The pertinent Kansas law provides that the mortgagor shall have the exclusive right of redemption for twelve months following the date of sale; thereafter, if the mortgagor has not redeemed, the lien creditors enjoy a three-month period during which they, or the mortgagor, may redeem.[4] Kan. Gen. Stat., 1949, § 60–3440. If the mortgagor redeems at any time, all redemption rights are cut off. *Sigler* v. *Phares*, 105 Kan. 116, 181 P. 628. In this case, the mortgagors redeemed within twelve months of the date of sale but subsequent to the attempt of the United States to redeem.

The narrow question for our decision is whether that part of § 2410 (c) which grants the United States a right to redeem applies to the present situation. If it does, then the inconsistent provisions of state law must fall under the Supremacy Clause of the United States Constitution.[5] U. S. Const., Art. VI.

On analysis, the question is not only narrow but also susceptible to rapid solution since the plain language of § 2410 (c) reveals no impediment to its applicability once

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[3] *John Hancock Mutual Life Ins. Co.* v. *Hetzel*, 185 Kan. 274, 341 P. 2d 1002.

[4] From the fifteenth to and including the eighteenth month the mortgagor resumes enjoyment of the exclusive right to redeem. Kan. Gen. Stat., 1949, § 60–3439. Upon the expiration of eighteen months without redemption, the purchaser's certificate of title becomes absolute. Kan. Gen. Stat., 1949, § 60–3438.

[5] Appellees argue briefly that Congress does not have the power to establish rules governing state created property rights, citing *United States* v. *Bess*, 357 U. S. 51. This contention was raised and rejected in *United States* v. *Brosnan*, 363 U. S. 237, 240–241.

resort is had to § 2410 (a). Moreover, an examination of the legislative history of § 2410 shows that Congress considered the redemption provision of § 2410 (c) an important and integral feature of § 2410. The pertinent excerpts reveal that Congress feared a situation where the United States, as junior lienor, would find its lien dissolved pursuant to § 2410 without having had a chance to protect its right to any amount the foreclosed property might be worth in excess of the senior lien.[6] As Congress recognized, one method of protection for junior lienors is to bid competitively at the foreclosure sale, thereby preventing property worth more than the amount due on the senior lien from being sold at a discount. However, it was noted that, barring special circumstances, the United

[6] Initial concern was expressed by Representative Bloom in a colloquy reported at 72 Cong. Rec. 3120-3121. Despite the apprehension expressed in this exchange, the bill that eventually became § 2410 passed the House with no provision to protect the United States' rights as junior lienor. The Senate, however, added a new section authorizing the United States to bid at the foreclosure sale and a delay of the sale until the completion of the next succeeding session of Congress so as to allow the Government time to obtain a congressional appropriation with which to make its bid. S. Rep. No. 351, 71st Cong., 2d Sess. 1-2.

This addition was stricken by the Conference Committee and the redemption provision now in § 2410 (c) was substituted. In rejecting the Senate proposal for protecting the rights of the United States as a junior lien holder, the Conference Committee concluded that a federal redemption provision was a more effective method for protecting those rights. It stated:

"The Senate amendment contains a clause allowing the court to stay proceedings on sale until the expiration of the next session of Congress. This was no doubt intended to allow Congress to appropriate money to enable the United States, if a junior lien holder, to bid enough at the sale to take care of prior liens and thus protect its own. In place of that the substitute bill provides that if a junior lien holder, the United States shall have a year in which to redeem. That does away with any necessity for a delay of sale." H. R. Rep. No. 2722, 71st Cong., 3d Sess. 4.

States could not pursue this procedure unless it first secured an appropriation from Congress and, thus, the one-year period of redemption was inserted to afford the United States sufficient time to secure an appropriation and protect its interests. The protective nature of the redemption proviso in § 2410 (c) was recognized in *United States* v. *Brosnan*, 363 U. S. 237, 246, where this Court stated that "the Government is guaranteed a one-year right to redeem if the plaintiff proceeds under § 2410 . . . ." This proposition is in line with the well-settled rule that Congress may impose conditions upon a waiver of the Government's immunity from suit. See *e. g., Soriano* v. *United States*, 352 U. S. 270, 276, where we added that these protective conditions "must be strictly observed and exceptions thereto are not to be implied."

Appellees concede, as they must, that § 2410 was mandatorily applicable to the present situation since Kansas law required joinder of the United States and the United States can only be joined pursuant to § 2410. However, they would have us find a superseding congressional intent to afford the United States a right of redemption only when no such right is granted under state law; when some privileges of redemption are given by the State to junior lienors, although of lesser magnitude than that provided in § 2410 (c), then the federal right is no longer pertinent. The short answer to this contention is that no indication of such a limitation appears in the body of the statute—which specifies that the United States "shall" have one year to redeem—or in its legislative history. See *Soriano* v. *United States*, *supra*.

Appellees also press upon us the fact that the federal agency here concerned, the Farmers' Home Administration, could have protected its junior lien without insisting on a right to redeem under § 2410, since 7 U. S. C. § 1025 authorizes the Secretary of Agriculture, who supervises the

Farmers' Home Administration, to bid at foreclosure sales.[7] But the significance of this section and its effect on § 2410 is not clear. Concededly, if there were some indication in §1025 that the power of the Secretary of Agriculture is limited to bidding at the foreclosure sale, then we would be faced with a problem of resolving the two statutes. Cf. *United States* v. *Stewart*, 311 U. S. 60. However, there is no conflict, either express or implied, between § 1025 and § 2410. In effect, appellees would have us read § 2410 as authorizing redemption "except where another federal statute authorizes the particular agency concerned to bid at foreclosure sales." The only support for such an interpretation is the fact that some federal agencies are authorized to bid at foreclosure sales. We think that the logical connection is insufficient to support such a violent graft on the language of the statute.

Appellees advance several other contentions which require only brief discussion. They argue, citing *Guaranty Trust Co.* v. *United States*, 304 U. S. 126, that the United States, by seeking affirmative relief in a state court, subjects itself to all the incidents of state law which govern other suitors. See Hart & Wechsler, The Federal Courts and the Federal System 1112. However, we need go no farther than the *Guaranty Trust* case to uncover one of the several special rules which favor the United

[7] "The Secretary is authorized and empowered to bid for and purchase at any foreclosure or other sale, or otherwise to acquire property pledged or mortgaged or conveyed to secure any loan or other indebtedness owing to or acquired by the Secretary under sections 1001–1005d, 1007, and 1008–1029 of this title; to accept title to any property so purchased or acquired; to operate for a period not in excess of one year from the date of acquisition, or lease such property for such period as may be deemed necessary to protect the investment therein; and to sell or otherwise dispose of such property in a manner consistent with the provisions of section 1017 of this chapter."

States in preference to other plaintiffs—the rule that the United States is not subject to local statutes of limitations. See *United States* v. *Summerlin*, 310 U. S. 414. Other such rules, applicable in both federal and state courts, can be found in 28 U. S. C. §§ 2404, 2405, 2407, 2408, 2413. Furthermore, the present proceedings were not initiated by the United States but by appellee insurance company when it joined the United States pursuant to § 2410.

Appellees also point to the first sentence of § 2410 (c)—"a judicial sale in such action or suit shall have the same effect respecting the discharge of property from liens . . . held by the United States as may be provided . . . by the local law of the place where the property is situated." The contention is that this sentence governs all the succeeding language in § 2410 (c). However, this construction would render the succeeding language nugatory. The more rational interpretation is that the propositions following the first sentence in § 2410 (c) were designed as qualifications on the first sentence. This thesis gains force from the fact that the sentence setting out the United States' redemption privilege in § 2410 (c) previously was preceded by the words "*And provided further.*" 46 Stat. 1529. This phrase was eliminated in the 1948 revision of the Federal Judicial Code but the Reviser's Note indicates that no substantive changes were intended. 28 U. S. C. A. § 2410.

Therefore, the judgment of the Supreme Court of Kansas must be reversed and the case remanded with instructions to order the issuance of a certificate of redemption to the United States in accordance with its tender made in the District Court. However, in case the mortgagors wish to redeem in turn from the United States—a procedure in which the United States has acquiesced—we intimate no opinion as to the amount due the United States. The question whether the United States is

entitled to payment of its claims in full upon redemption by the mortgagors or only to such debts as have been declared liens by the state courts is one to be decided according to Kansas law. Cf. *First National Bank & Trust Co.* v. *MacGarvie*, 22 N. J. 539, 547, 126 A. 2d 880, 885.

Reversed and remanded.